

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANNETTE MARIE EDWARDS,

Plaintiff,

Case No. 06-12867

vs.

DISTRICT JUDGE GERALD E. ROSEN
MAGISTRATE JUDGE STEVEN D. PEPE

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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REPORT AND RECOMMENDATION

This matter is before the Court on a Complaint for judicial review following an adverse decision of the Commissioner of Social Security. The Complaint was filed on June 28, 2006, and referred to the undersigned for all pretrial purposes (Dkt. #2). On February 14, 2007, the undersigned issued an Order for Plaintiff show cause in writing within seven days of receipt of this Order why Plaintiff has failed to make service of the summons and complaint in this matter (Dkt. #3). No response to this Order to Show Cause has been received. Moreover, a review of the file indicates that service of the summons and complaint has not been made upon the Defendant(s) in this action.

Pursuant to Rule 4 (m), Federal Rules of Civil Procedure, if service of the summons and complaint has not been accomplished within 120 after the filing of the complaint, the Court may dismiss an action without prejudice or direct that service be effected within a specified time. In this case, Plaintiff's response to the undersigned's Order to Show cause is over 30 days late. Moreover, over 280 days have passed since Plaintiff filed her Complaint and a review of the

docket indicates that service of the summons and complaint still has not been made upon the Defendant(s) in this action.

While ordinarily in a *pro se* Social Security case where a Plaintiff claims error in the denial but fails to file a motion for summary judgment or a response to the Commissioner's motion, I will review the ALJ decision to determine if any errors are apparent warranting any modification or remand under 42 U.S.C. § 405(g). But without service on Defendant, there is no record before the Court to permit such a review.

For the reasons noted above, **IT IS RECOMMENDED** that this case be **DISMISSED WITHOUT PREJUDICE**. The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local*, 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the Court. The response shall

address specifically, and in the same order raised, each issue contained within the objections.

Dated: March 30, 2007
Flint, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2007, I electronically filed the foregoing paper with the Clerk Court using the ECF system which will send electronic notification to the following: James A. Carlin, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Annette Marie Edwards, 2002 Gilcrest, Detroit, MI 48235, Social Security Administration - Office of the Regional Counsel, 200 W. Adams, 30th. Floor, Chicago, IL 60606

s/ James P. Peltier
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